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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 JOHN SAMUEL FERRARI RIVERA,

9 Petitioner,

10 v.

11 BRYAN S WILCOX, et al.,

12 Respondents.

CASE NO. C19-385-RSM-BAT

**ORDER DENYING MOTION TO
DISMISS AS MOOT**

13 This is a 28 U.S.C. § 2241 immigration habeas action. The Government filed a motion to
14 dismiss on April 17, 2019. Dkt. 8. On May 7, 2019, petitioner timely filed an amended petition
15 pursuant to Federal Rule of Civil Procedure 15(a)(1)(B).¹ “It is well-established in our circuit that
16 an amended complaint supersedes the original, the latter being treated thereafter as non-existent.”
17 *Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (internal quotation and
18 citation omitted). Because the Government’s motion to dismiss targeted petitioner’s original
19 petition, which is no longer in effect, the Court DENIES as moot the Government’s motion to
20 dismiss. *See id.* (holding that district court should have denied as moot motion to dismiss after
21 amended complaint was filed); *Acosta v. Wellfleet Comms., LLC*, No. 16-2353, 2017 WL 4079261,

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23 ¹ “A party may amend its pleading *once* as a matter of course within: . . . if the pleading is one to which a responsive
pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule
12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(B) (emphasis added). “In all other cases, a party may
amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2).

1 at *2 n.2 (D. Nev. Sept. 14, 2017) (denying as moot motion to dismiss after granting plaintiff leave
2 to file an amended complaint); *Arevalo v. Castro*, No. 15-407, 2016 WL 7116006, at *1 (D. Nev.
3 Dec. 6, 2016) (same).

4 **Within 21 days** of the date of this Order, the Government shall file a return and
5 memorandum that addresses petitioner's amended habeas petition and motion to stay. The
6 Government shall note its return for consideration on the fourth Friday after it is filed. Petitioner
7 may file a response not later than the Monday immediately preceding the noting date, and the
8 Government may file a reply not later than the noting date.

9 The Clerk shall send copies of this Order to the parties and to the Honorable Brian A.
10 Tsuchida.

11 DATED this 16th day of May 2019.

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13 RICARDO S. MARTINEZ
14 CHIEF UNITED STATES DISTRICT JUDGE
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